



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-R05-OAR-2016-0277; FRL-9953-09-Region 5]

**Reclassification of the Sheboygan, Wisconsin Area to Moderate
Nonattainment for the 2008 Ozone NAAQS**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Sheboygan, Wisconsin area (Sheboygan County) has failed to attain the 2008 ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of July 20, 2016, and that this area is not eligible for an extension of the attainment date. EPA is proposing to reclassify this area as "moderate" nonattainment for the 2008 ozone NAAQS. Once reclassified as moderate, the State of Wisconsin must submit State Implementation Plan (SIP) revisions that meet the statutory and regulatory requirements that apply to areas classified as moderate nonattainment for the 2008 ozone NAAQS. EPA is proposing to require submission of the necessary moderate area SIP revisions as expeditiously as practicable, but no later than January 1, 2017.

DATES: Comments must be received on or before **[insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2016-0277 at <http://www.regulations.gov> or via email to Aburano.Douglas@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

II. How does EPA determine whether an area has attained the 2008 ozone standard?

III. What is EPA proposing and what is the rationale?

IV. Summary of proposed actions

V. Statutory and Executive Order reviews

I. Background

On April 30, 2012, the Sheboygan area was designated as nonattainment for the 2008 ozone NAAQS and was classified as marginal, effective July 20, 2012 (77 FR 30088, May 21, 2012). On March 6, 2015 (80 FR 12264), in the implementation rule for the 2008 ozone NAAQS, EPA established an attainment deadline of July 20, 2015, for marginal areas.

Clean Air Act (CAA) section 181(b)(2) requires EPA to determine, based on an area’s ozone design value¹ as of the

¹ An area’s ozone design value for the eight-hour ozone NAAQS is the highest three-year average of the annual fourth-highest daily maximum eight-hour average concentrations of all monitors in the area. To determine whether an area has attained the ozone NAAQS prior to the attainment date, EPA considers the monitor-specific ozone design values in the area for the most

area's attainment deadline, whether the area has attained the ozone standard by that date. The statute provides a mechanism by which states that meet certain criteria may request and be granted by the EPA Administrator a one-year extension of an area's attainment deadline. The CAA also requires that areas that have not attained the standard by their attainment deadlines be reclassified to either the next "highest" classification (e.g., marginal to moderate, moderate to serious, etc.) or to the classifications applicable to the areas' design values.

On May 4, 2016 (81 FR 26697), based on EPA's evaluation and determination that the area met the attainment date extension criteria of CAA section 181(8)(5), EPA granted the Sheboygan area a one-year extension of the marginal area attainment date to July 20, 2016.

II. How does EPA determine whether an area has attained the 2008 ozone standard?

Under EPA regulations at 40 CFR part 50, appendix P, the 2008 ozone NAAQS is attained at a site when the three-year average of the annual fourth-highest daily maximum eight-hour average ambient air quality ozone concentration is less than or equal to 0.075 parts per million (ppm). This three-year average

recent three years with complete, quality-assured monitored ozone data prior to the attainment deadline.

is referred to as the design value. When the design value is less than or equal to 0.075 ppm at each ambient air quality monitoring site within the area, then the area is deemed to be meeting the NAAQS. The rounding convention under 40 CFR part 50, appendix P, dictates that concentrations shall be reported in ppm to the third decimal place, with additional digits to the right being truncated. Thus, a computed three-year average ozone concentration of 0.076 ppm is greater than 0.075 ppm and, therefore, over the standard.

EPA's determination is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System database (formerly known as the Aerometric Information Retrieval System). Ambient air quality monitoring data for the three-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of required monitoring days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined according to appendix P of part 50.

III. What is EPA proposing and what is the rationale?

A. Determination of Failure to Attain and Reclassification

EPA is issuing this proposal pursuant to the agency's statutory obligation under CAA section 181(b)(2) to determine

whether the Sheboygan nonattainment area has attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016. In this action, EPA is proposing to determine that the Sheboygan area failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016. This area is not eligible for an additional one-year attainment date extension because, at 0.076 ppm, the average of the 2014 and 2015 annual fourth highest daily maximum eight-hour average ozone concentrations for the monitor in the area is greater than 0.075 ppm. (2014 and 2015 are the last two full years of complete air quality data prior to the July 20, 2016, attainment date.) Table 2 shows the relevant monitoring data for the Sheboygan area.

Table 2.

Area	County	Monitor	2013 4 th high	2014 4 th high	2015 4 th high	2013- 2015 average
Sheboygan, WI	Sheboygan	Kohler Andre Park 551170006	0.078	0.072	0.081	0.077

CAA section 181(b)(2)(A) provides that a marginal nonattainment area shall be reclassified by operation of law upon a determination by the EPA that such area failed to attain the relevant NAAQS by the applicable attainment date. Based on quality-assured ozone monitoring data from 2013-2015, as shown in Table 2, the new classification applicable to the Sheboygan

area would be the next higher classification of “moderate” under the CAA statutory scheme.²

Moderate nonattainment areas are required to attain the standard “as expeditiously as practicable” but no later than six years after the initial designation as nonattainment (which, in the case of the Sheboygan area, is July 20, 2018). The attainment deadlines associated with each classification are prescribed by the CAA and codified at 40 CFR 51.1103.

B. Moderate Area SIP Revision Submission Deadline

Wisconsin will be required to submit a revised SIP that addresses the CAA’s moderate nonattainment area requirements, as interpreted and described in the final ozone NAAQS. See 40 CFR 51.1100 *et seq.* Those requirements include: (1) an attainment demonstration (CAA section 182(b) and 40 CFR 51.1108); (2) provisions for volatile organic compounds (VOC) and nitrogen oxides (NO_x) reasonably available control technology (RACT) (CAA section 182(b)(2) and 40 CFR 51.1112(a)–(b)) and reasonably available control measures (RACM) (CAA section 172(c)(1) and 40 CFR 51.1112(c)); (3) reasonable further progress (RFP) reductions in VOC and/or NO_x emissions in the area (CAA sections 172(c)(2) and 182(b)(1) and 40 CFR 51.1110); (4) contingency measures to be implemented in the event of failure to meet a

² The 2013–2015 design value the Sheboygan area does not exceed 0.100 ppm, which is the threshold for reclassifying an area to serious per CAA section 181(b)(2)(A)(ii) and 40 CFR 51.1103.

milestone or to attain the standard (CAA section 172(c)(9)); (5) a vehicle inspection and maintenance program, if applicable (CAA section 181(b)(4) and 40 CFR 51.350); and, (6) NO_x and VOC emission offsets at a ratio of 1.15 to 1 for major source permits (CAA section 182(b)(5) and 40 CFR 51.165(a)). See also the requirements for moderate ozone nonattainment areas set forth in CAA section 182(b) and the general nonattainment plan provisions required under CAA section 172(c).

When an area is reclassified under CAA section 181(b)(2), CAA section 182(i) requires the state to meet the new requirements according to the schedules prescribed in those requirements. It provides, however, "that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions." CAA section 182(b), as interpreted by 40 CFR 51.1100 *et seq.*, describes the required SIP revisions and associated deadlines for a nonattainment area classified as moderate at the time of the initial designations. However, these SIP submission deadlines (e.g., three years after the effective date of designation for submission of an attainment plan and attainment demonstration) have already passed. Accordingly, EPA is proposing to exercise its discretion under CAA section 182(i) to adjust the SIP submittal deadlines for the Sheboygan area.

In determining an appropriate deadline for the moderate area SIP revisions for the Sheboygan area, EPA notes that, pursuant to 40 CFR 51.1108(d), the state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date. In the case of nonattainment areas classified as moderate for the 2008 ozone NAAQS, the attainment year ozone season is the 2017 ozone season (40 CFR 51.1100(h)).

Further, in the implementation rule for the 2008 ozone NAAQS, EPA established the requirement for areas to implement RACT measures as expeditiously as practicable, but no later than January 1 of the fifth year after the effective date of a nonattainment designation. (81 FR 12280) For the nonattainment designations that were effective July 20, 2012, this would require RACT measures (for areas where they are required) to be implemented by January 1, 2017. This implementation deadline ensured that RACT measures would be required to be in place no later than the last ozone season prior to the moderate area attainment date of July 20, 2018.

The January 1, 2017, SIP submission deadline is consistent with the SIP submission deadline established for all other Marginal nonattainment areas in the country that were recently

reclassified to Moderate for the 2008 ozone NAAQS,³ and is consistent with the timeframes in the CAA as codified in the EPA's implementing regulations. Accordingly, EPA is proposing to require Wisconsin to submit the required SIP revisions no later than January 1, 2017.

IV. Summary of proposed actions

EPA is proposing to determine that the Sheboygan area failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2016, is not eligible for an additional one-year attainment date extension, and must be reclassified as moderate. EPA is also proposing to require Wisconsin to submit SIP revisions to address moderate area requirements as expeditiously as practicable, but no later than January 1, 2017.

V. Statutory and Executive Order reviews.

Under section 181(b)(2) of the CAA, a determination of nonattainment is a factual determination based upon air quality considerations and the resulting reclassification must occur by operation of law. A determination of nonattainment and the resulting reclassification of a nonattainment area by operation of law under section 181(b)(2) does not in and of itself create any new requirements, but rather applies the requirements contained in the CAA. For these reasons, this action:

³ See 81 FR 26697 (May 4, 2016).

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995

(15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 81

Environmental protection, Administrative practice and procedure,
Air pollution control, Designations and classifications,
Intergovernmental relations, Nitrogen oxides, Ozone, Reporting
and recordkeeping requirements, Volatile organic compounds.

Dated: September 14, 2016.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.

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